

DISA Acquisition Deskbook

PAST PERFORMANCE



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Past Performance

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I. INTRODUCTION

WHAT IS PAST PERFORMANCE INFORMATION

Past performance information (PPI) is data that has been collected with respect to a contractor's execution of responsibilities under ongoing or previous contracts. This information is one predictor of an offeror's ability to successfully perform under the contract. PPI provides the contracting officer with a record of how a contractor has performed in the past. This information has come from a variety of sources such as questionnaires, face-to-face interviews, telephone interviews, quality certifications (e.g. Deming Quality Award, ISO 9000 certification, etc.), and agency files or databases. PPI is collected from government and/or commercial sources.

WHY USE PAST PERFORMANCE INFORMATION

The President signed into law on October 13, 1994 the Federal Acquisition Streamlining Act (FASA). {link to FASA section discussing PPI} In this law, Congress recognized that it is appropriate and relevant for the government to consider contractor's past performance in evaluating whether or not the contractor is suitable to do future work with the government. The collection and utilization of PPI is critical to obtaining best value goods and services. Doing business with proven performers reduces risk, which reduces the level of government oversight. This translates into cost savings for the taxpayer and streamlined processes. The collection of PPI will incentivize industry to strive for excellence. In addition, Dr. Jacques Gansler (USD(A&T)) issued a policy memorandum {link to policy memorandum} on 20 November 1997 requiring that agencies begin collecting past performance information 1 February 1998.

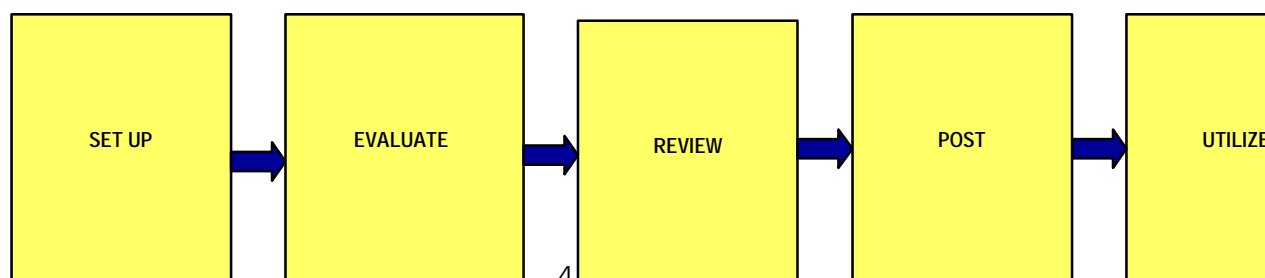
II. COLLECTING PAST PERFORMANCE INFORMATION

DOD has issued guidance addressing how PPI will be collected based on designated business areas or sectors. Business sectors, as defined in the USD(A&T) policy memorandum, are groups of goods or services that share the same or similar characteristics, similar requirements for engineering development and manufacturing or technology, and/or the same or very similar PPI needs for making best value source selections. DOD has defined eight business sectors [{link to the DOD-defined sectors}](#). DISA procurements generally fall under the Services and Information Technology business sectors.

WHEN TO COLLECT

PPI will be collected for all contracts with an estimated value (base plus option years) in excess of \$1,000,000 in the Services and Information Technology business sectors. If the contract value breaches this threshold at anytime during contract performance due to modification, PPI collection must be initiated. PPI for contracts below this threshold shall be collected at the discretion of the contracting officer.

THE COLLECTION PROCESS



SET UP

PPI collection is required for all new contracts awarded after 1 February 1998, with a total contract value (base year plus options) of \$1,000,000 or greater (Information Technology and Services business sectors). This threshold also applies to orders under GSA schedules and Commercial Service Authorizations (CSAs). Immediately after contract award, certain "profile" information must be forwarded to the PPI systems administrator in D44. The systems administrator is responsible for initializing the record or set up. Profile information {link to list that Nathan requests} consists of contract number, contractor name, contract type, Federal Supply Code, key subcontractors and other data.

The systems administrator will also ask how frequently PPI collection will occur. For contracts with a period of performance of 12 months or longer, a minimum of one evaluation or "report card" is required by the Federal Acquisition Regulation (FAR) 42.1502{link to FAR cite}. The frequency will be determined by contract type, what you are buying and how you are using the PPI data being collected. For example, if you are doing regular fair opportunity screenings with past performance as an evaluation factor, you may want the most current PPI available and quarterly evaluations may be appropriate. On the other hand, a firm-fixed-price contract for computer hardware may only require annual reviews.

The individuals in the review cycle will also be identified during the set up phase (also required with Acquisition Strategy Council (ASC) documentation). The systems administrator gathers e-mail addresses, phone and fax numbers from the contracting officer for all parties participating in the review process. The review section below will discuss this in further detail.

EVALUATE

229 Once the record has been initialized or established, the
230 systems administrator will inform the evaluator by e-mail
231 when the contract or order is ready to be evaluated. In
232 this e-mail, the evaluator receives directions on how to
233 use the automated tool and provided a username and
234 password to enter the system. The evaluator is normally
235 given about three weeks to complete their evaluation.
236 Narrative comments are required for each assessment
237 element. After responding to all the questions, the
238 record is submitted. The systems administrator then
239 releases for review and/or comment.

240

241 REVIEW

242

243 Agency Review

244

245 The system administrator can now release the record for
246 agency review. Each reviewer has 1-2 weeks to comment on
247 the evaluator's input. The systems administrator informs
248 reviewers by e-mail that the record is available for their
249 review. Reviewers are provided usernames and passwords.
250 If there are multiple agency reviewers, the reviews will
251 be performed sequentially.

252

253 ☐ For contracts less than \$1,000,000 (collection is
254 discretionary), the review cycle must include at a
255 minimum, the task monitor or contracting officers
256 representative (COR), contract specialist or contracting
257 officer, and contractor.

258

259 ☐ Contract, orders under GSA schedules and CSAs with a
260 total value (base year plus options) of \$1,000,000 or
261 more must have the following minimum review after
262 evaluator input:

263

- 264 ☐ Contracting Officer
- 265 ☐ Senior Program Management Official (O-6/GS-15 or
266 above)
- 267 ☐ Contracting Officer Release
- 268 ☐ Contractor
- 269 ☐ Commander, Defense Information Technology
270 Contracting Organization (DITCO)(Disagreements
271 review as required)
- 272 ☐ Vice Director Approval (As required)

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The contracting officer must review/comment prior to the program management office review in order to capture any business or contractual issues that the program manager needs to be aware of. Contracting officer review cannot be delegated.

Senior level program management review is required to ensure that an individual, accountable to the Deputy Director (DD) has reviewed and concurs with the evaluation. This review must be accomplished by an individual at rank of O-6, grade GS-15, or above. This review cannot be further delegated.

The contracting officer is responsible for ensuring that no discrepancies exist in the agency reviewer's comments prior to release to the contractor. If there are inconsistencies, the contracting officer will serve as the mediator. Any differences must be resolved prior to release to the contractor. The objective is to provide a coordinated and consolidated position to the contractor.

Contractor Review

After the final agency review, the contractor is then notified by e-mail and provided their username and password. FAR 42.1503(b){[link to Far Part 42](#)} requires a minimum of thirty days for contractor review. The contractor can concur, concur with comments, or nonconcur with comment regarding the evaluation. If the contractor concurs or concurs with comments, the record is submitted to the DISA Past Performance Database (DPPD). When the contractor returns an evaluation and has "nonconcurrent" with one more of the ratings, the disagreement review process applies.

Disagreements Review

The Commander, DITCO, will perform disagreement review first. At this time, the DITCO Commander will fact find to ensure that there were no administrative errors on either parties behalf. If his/her review results in the government changing its position or the contractor withdrawing their rebuttal, the record will be corrected to reflect the changed scores prior to posting to the database. If the DITCO Commander agrees with the original government position or has a third opinion, the

DISA Vice Director must approve prior to releasing to the database. All comments will remain part of the record UNLESS the Government position is reversed or the contractor withdraws their comments.

POST

The data is considered certified once the evaluation and all reviews have been completed and any disagreements have been reviewed, disposed or a third party opinion issued. The record, once certified, is ready to be submitted or posted to the DPPD.

UTILIZE

The certified information in the DPPD can be queried for use by the government. PPI can be used in many ways. For example, the contracting officer can use this information when making a responsibility determination or as an evaluation factor in source selections. It can also be used for fair opportunity screenings or option exercise decisions. Whenever PPI is used the contracting officer must always ensure that the information is both timely and relevant to the requirement at hand.

WHO ARE THE PEOPLE IN THE PROCESS

Each DISA Acquisition official involved in the process must be aware of their role and responsibilities in order for DISA's Past Performance system to work effectively.

- ❑ Evaluator: The evaluator of a contract, order, or CSA will be the person who has monitored the contractor's progress on a routine basis.
- ❑ Task Monitor: A task monitor is an individual, designated by the contracting officer, who supports the customer by performing technical and administrative functions at the task order level under a task order contract. In most instances under task order contracts, the task monitor has observed the contractor's performance and should be the individual completing the evaluation.
- ❑ Contracting Officer's Representative (COR): The COR {link to DARS 1.602-2-90} is the contract

technical/administration liaison between the contracting officer and the contractor. CORs may be designated to complete contractor past performance evaluations. However, in most instances at DISA, they perform a review after the task monitor has served as the evaluator.

- ❑ Contracting Officer: The contracting officer is ultimately responsible to ensure that all evaluations of contractor past performance is objective, fair and accurately reflects the contractor's performance. Conflicting Agency opinions are to be resolved by the contracting officer. Whenever PPI is used, the contracting officer must always ensure that the information is both timely and relevant to the requirement at hand.
- ❑ Contractor: A contractor, for the purpose of this Deskbook, is a prime contractor. The contractor has a minimum of thirty days to review their past performance data and provide comments.
- ❑ Systems Administrator: The Contract Technical Services Division (D44) is responsible for past performance systems administration for DISA. The system administrator is responsible for the set up phase, transition to other phases in the process, and the overall operation and maintenance of the system. This includes the issuance of user names and passwords, including their expiration, for internal and external users of the tool.
- ❑ Source Selection Authority: This is the DISA official that has been appointed by the DISA Director to chair a source selection team (if no appointment has been made, the contracting officer is the source selection authority) and is responsible for the ultimate award decision. Source selection teams may use past performance information (based on the methodology in the solicitation) in the source selection process.
- ❑ External Users: Any users outside of DISA are considered external users. As required by FAR 42.1503(c){[link](#)}, agencies are required to share past performance information with other agencies.

SENSITIVITY OF THE INFORMATION

- ❑ Contractor evaluations may be used to support future award decisions; therefore they are marked **source selection information**. They should not be released to other than authorized government personnel and the contractor concerned.
- ❑ Task monitors, CORs, contracting officers, and program managers, or other designated procurement officials in the process (with a need to know) will be authorized usernames and passwords for limited periods of time.
- ❑ The contractor will be authorized access to their company data once released by the contracting officer during the review process and at anytime once certified and posted to the DPPD.
- ❑ The systems administrator, because of the nature of his/her assigned duties, will have unrestricted access to all data.
- ❑ Source selection teams will be authorized access to the DPPD for a specified period of time by the DISA system administrator.
- ❑ In particular, use caution and common sense when requested to provide contractor PPI to external users. Obtain identification of external user requesting past performance information. Name, title, agency name, address, phone number, and e-mail address should be collected and verified prior to release of any information - whether in electronic or paper format. The need to know must be justified as well!

HOW TO COLLECT PAST PERFORMANCE INFORMATION

The OUSD(A&T) memo requires manual collection (automated collection if available) of PPI to begin 1 February 1998. DISA will be collecting using an automated tool as well as an electronic form. Implementation of the automated tool

across DISA will be phased in, contract by contract, over the next year.

DISA Contractor Past Performance Tool Kit

The automated tool or DISA Contractor Past Performance Tool Kit is being tested using the following contract vehicles:

**Defense Enterprise Integration Systems (DEIS) II
Defense Information Infrastructure/Integration
Contract (IC)
Joint Interoperability Engineering Office (JIEO)
Systems Engineering (JSE)
Defense Information Systems Network (DISN) Support
Services - Global (DSS-G)
DEIS II - Contractor Support
Information Security (INFOSEC) Technical Support
Contract (ITSC)
Digital TV Direct-to-Ship (DTV-DTS)**

If an existing contract, GSA schedule buy, or CSA meet the threshold for collecting past performance information and is not listed above, move to the [Manual Collection {link to go below}](#) guidance below.

DISA has implemented a World Wide Web-based system for collecting, reviewing, and approving contractor past performance evaluations.

To complete an evaluation, the automated tool can be accessed one of two ways. Either:

- Enter the following URL:
<http://www.disa.mil/D4/pastdev.htm> or
- Go the Procurement and Logistics (D4) web site at <http://www.disa.mil/D4> and select the Past Performance Tool Kit which is listed on the navigation bar under "Services."


The Contractor Past Performance Evaluation Tool Kit homepage provides links to reference information and other

agency past performance guidance, as well as a link to the automated tool.

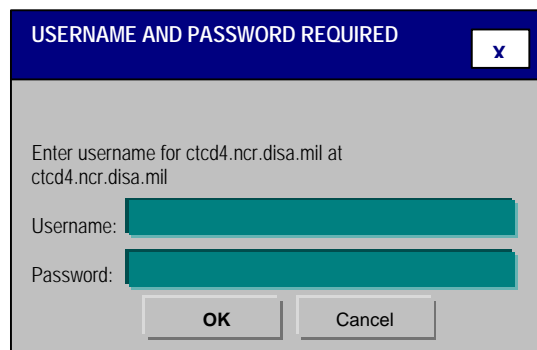
To complete your evaluation, use the following steps.

- Click on

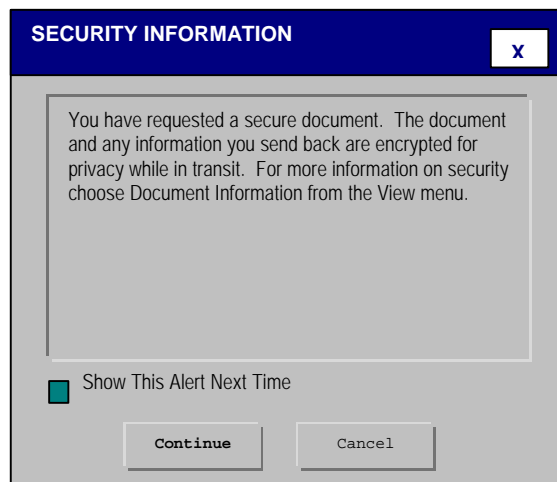


- Click on  [Complete/Review Past Performance Evaluations](#) (Username and Password Required)

- Enter your username and password provided via e-mail by the D44 systems administrator.



- Accept all security notifications when prompted



- Review the list of contracts/task orders etc. to evaluate. Click on the [ID](#), i.e., the contract number, task order number, or CSA number that you wish to evaluate to open the record.

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Contract	Contractor	ID	QF	Period	Title	Evaluator	Status
DISN	CIH Inc	DCA100-00-D-0000	QF	1QFY98	Concent Study	Samble	Pendin
GCCS	MAYCOR	DCA100-00-D-0001	QF	1QFY98	Test & Evaluation	Samble	Pendin

- Answer the five mandatory assessment elements {link to OSD(A&T) memo assessment element definitions} by selecting a score from the pull down menu on the right. There is a mandatory 5-point DOD rating system. {link to OSD(A&T) memo rating definitions}

The screenshot shows a web-based evaluation form. At the top, there is a tab labeled '1. QUALITY OR PRODUCT OR SERVICE' in blue text. To the right of the tab is a dropdown menu showing '5-Exceptional'. Below the tab, there are five criteria, each with a teal square icon:

- Compliance with Statement of Work (SOW), Statement of Objectives (SOO), or specifications
- Managed multiple tasks efficiently
- Appropriateness of contractor personnel assigned to effort
- Compliance with commonly accepted technical/professional standards, i.e. Defense Information Infrastructure (DII)
- Are the contractor's reports/data accurate

Below the criteria is a section titled 'QUALITY OF PRODUCT OR SERVICE COMMENTS:'. Under this title is a large teal text area for comments, with a small dropdown arrow on the right side.

- Each assessment element has a narrative comment block. Narrative comments are required for all ratings except satisfactory. There is no limit on length of comments.
- Submit evaluation

Submit Evaluation (Last Accessed 1998-01-12 15:20:00)

- Reminder notices will be sent out one week to 10 days from original notice to evaluator. Evaluators may revisit and update anytime during their evaluation period. The evaluation period will be open for approximately three weeks. Passwords will expire after that time.
- If the web site cannot be accessed or assistance is needed contact the Past Performance Help Desk at (703) 681-8459 or

625 e-mail D44Postm@ncr.disa.mil. Best results can be
626 obtained by using Netscape 3.0 or Microsoft Internet
627 Explorer 3.02 or higher, running under Windows NT 4.0
628 or Windows 95.

DISA Form 245

PPI can also be captured on a DISA Form 245 - Periodic and Deliverable Evaluation Form [{link to form}](#). This form is available in FormFlow on the DISANET under Standard Applications.

DISA Form 245 will be used to collect PPI for existing contracts, orders, or CSAs until transitioned to the automated tool. The form mirrors the automated tool.

Evaluators should follow the standards and procedures for evaluation, review, and posting mentioned previously in this guidance. Copies of completed evaluations must be forwarded to D44 for input into the DPPD.

PART III. EVALUATING PAST PERFORMANCE INFORMATION

Solicitation Considerations

This portion of the Deskbook addresses the pre-award stage and the use of past performance information as an evaluation factor in competitive negotiated acquisitions. It notes the importance of relevance of the past performance information to the government's Statement of Work, Specification or Statement of Objectives. It also provides a basic summary of possible approaches for the solicitation's Sections L and M treatment of past performance information.

□ Statement of Work (SOW) requirements and their relationship with Sections L & M

The requirements in the SOW are typically more specific than what is characterized in the Section L and M provisions. This presents challenges for the reader (both government and vendor) in correlating the information found in these sections. Try to remember your SOW requirements when developing past performance treatment for Sections L & M.

➤ The relationship of the SOW with Sections L & M

Past performance should be used with a clear relationship between the Statement of Work (SOW), Section L (instructions to offerors) and Section M (evaluation criteria). Any factors chosen for evaluation purposes should, as much as feasible, relate back to the requirements of the SOW. That is, ideally, the government evaluates past performance information against requirements stated in the SOW. Remember, the government decides what will be considered relevant past performance information. Once identified, this should be reflected not only in the Source Selection Plan (if one is required) but also in Sections L and M.

✓ Consider that an incumbent contractor might expect a literal, task-by-task similarity of the SOW requirement for scoring well on past performance. The incumbent may argue that other offerors' past performance should be downgraded unless it reflects exact similarity with the solicitation's and SOW's requirements.

✓ The government, however, does not have to be so literal. Section L identifies management or technical challenges that might be considered to be similar in complexity, scope and size. Section M provides the past performance evaluation elements.

More discussion on the relationship of the SOW requirements with the use of PPI is found in Chapter 2, [Basic Considerations](#) of the Office of Federal Procurement Policy's (OFPP) Guide to Best Practices for Past Performance [\[INSERT HOT LINK HERE\]](#).

PRACTICE TIP #1: Some solicitations have deliberately not required similarity of dollar value in PPI. Under these circumstances, the GAO held that it was proper for the agency not to consider dollar value of the prior contracts when evaluating the offerors' past performance. However, if the similarity of contract dollar value will be important for PP assessment, you should specifically instruct the offerors to submit this information.

PRACTICE TIP #2: At Section L, instruct offerors what information must be provided on each listed contract

experience. This can deflect post-award allegations that the agency evaluated PPI on the basis of "undisclosed criteria."

PRACTICE TIP #3: In your solicitation, Section M provisions (past performance and the rest) should be cross-referenced to the specific Section L provisions. This will help drafter, offeror and evaluator correlate the requested information to the evaluation.

□ **Developing Section L's Past Performance Information requirements**

This portion of the desk book provides a brief discussion on some common issues for the types of past performance information that should be addressed in Section L. This is not an exhaustive treatment of the topics; it is provided for consideration as you are developing Section L language.

➤ **Company's specific division or unit**

When a contractor or a potential offeror is a large company, it is not unusual for a division or unit within that company to be identified as the performing office. Typically, the company's proposal will specify which office or division will be performing the work.

Care must be taken by the government when evaluating performance information....is the information received about the division or unit proposed for your solicitation?

Keep your eyes open for this potential confusion. One way to avoid the confusion is for Section L language to specify whether past performance information is to be provided on the corporate division or unit that will be performing the requirements and whether this will be in lieu of or in addition to information on the parent corporation.

PRACTICE TIP #1: Your performance questionnaires should provide for the identity of the specific

business unit or division designated in the proposal. You might also want to include the business address or geographic location of that unit/division. This will assist the party responding to your questionnaire and ensure that the correct group is being evaluated.

PRACTICE TIP #2: If it is not clear from the proposal whether the parent company or one of its divisions will be responsible for contract performance be sure to address this with the offeror. It affects not only the collection of performance information but also any responsibility determination.

➤ Subcontractor's experience

What will the government want to do about subcontractor experience and past performance? The revised FAR Part 15 recommends taking into account subcontractor's past performance information, (when the subcontractors will perform major or critical aspects of the work) if such information would be relevant to the acquisition. FAR 15.305(a)(2)(iii){[link](#)}.

When drafting Section L, give some thought about the purpose of subcontractor information in relation to Section M evaluation. How the procurement will deal with subcontractor experience can be expressly stated or it can be inferred; either approach has its own merit.

Absent solicitation language expressly prohibiting the submission of subcontractors' prior experience or the use of subcontractors to perform the contract, an agency can consider the experience of proposed subcontractors. This also allows the consideration of an offeror's proposed subcontractors and/or management personnel past performance information where the offeror/vendor business lacks prior experience.

✓ If there are valid reasons for only considering the offeror's experience and past performance then the proposed subcontractors' experiences can be ignored when evaluating past performance.

PRACTICE TIP #1: If it is expected that the offerors will be performing the majority of the work with their own workforce, you may want to specifically exclude subcontractors= prior experience from Section L as well as Section M.

PRACTICE TIP #2: Given the revised FAR recommendation to consider subcontractor past performance information if relevant, it is prudent for the government to specifically contemplate whether to require submission of separate subcontractor past performance information.

PRACTICE TIP #3: You should always keep in mind how to treat (limit or ignore) subcontractor experience and past performance information. It must be reasonable and consistent with the solicitation= language.

➤ Possible approaches for addressing absence of prior experience

A big challenge in evaluating past performance occurs when an offeror is a new entity and does not have prior experience.

The revised FAR Part 15 tells us an offeror may not be evaluated favorably or unfavorably on past performance when the offeror lacks a record of relevant past performance or information is not available. This replaces it previously recommended Aneutral@ evaluation on past performance for these offerors. However, the revised FAR does not provide guidance on how this differs from the neutral rating.

While this primarily affects Section M language and will be addressed in this Deskbook= discussion on Section M, there is also a way to address the situation in Section L.

Consider separating corporate experience/past performance from other experience/past performance information. This approach appears to be what the revised FAR Part 15 had in mind when recommending use of past performance information regarding predecessor companies, key personnel with relevant experience and

subcontractor's that will perform major or critical aspects of the requirement.

When your solicitation requires these various sources of past performance information, the offerors could not lump together their corporate experience with key personnel experience. This would then allow the government, in Section M, to separately address and consider a new corporate entity's lack of prior corporate experience or past performance.

➤ Requiring offerors to identify and explain performance problems as well as any corrective actions taken

The revised FAR 15 requires the government to authorize offerors to provide information on problems encountered on their identified contracts and the offeror's corrective actions. FAR 15.305(b)(2)(ii){link}. In addition, OFPP A Best Practices@ guide notes that some contracting officers find it beneficial to ask the offeror to discuss any major problems encountered in prior contracts.

It is highly recommended that in Section L the offerors be informed that failure to satisfactorily address past performance problems may have an adverse effect on the evaluation of past performance.

➤ What time frame, how many, and which prior contracts should the offerors be required to identify?

TIME FRAME. The easiest approach to answering these questions is to first select a reasonable time frame for requiring past performance information. FAR 42.1503 {link} limits the use for source selection purposes of past performance information retained no more than three years after completion of contract performance.

The OFPP's Best Practices in Past Performance recommends requesting references for ongoing or contracts completed within the last three years.

Use your judgment about whether three years goes too far back and if a shorter period is sufficient. Voluminous information seldom lends itself to a streamlined source selection process.

Finally, remember your government counterparts who you will deluge with requests for reference checks on all these contracts.

HOW MANY AND WHICH ONES. Once a time frame has been selected, OFPP recommends not allowing the offeror to cherry pick its prior contracts but required to provide all contracts performed during the designated time period. This allows the government to obtain a complete picture of the offeror's overall, recent performance record.

✓ If the OFPP approach is taken the burden is on the offeror to identify ALL ongoing and prior contracts. This could require voluminous information from the offeror.

✓ On the other hand, the government can specify the number of contracts the offeror is to identify. This does allow the offeror to cherry pick its contracts.

Again, use your good judgment in deciding what approach best suits the particular procurement.

➤ Can you consider other potential sources the government might rely upon for Past Performance Information?

The FAR 15.305 clearly allows us to obtain past performance information obtained from other sources. The OFPP Guide recommends that Section L contain a statement that the government may use information from other sources other than those identified by the offeror.

PRACTICE TIP #1: The appropriate Section L language will put the offerors on notice that the government may consider other sources of information, and it does not create a duty to consider other sources. It

will provide the offeror the opportunity to identify in its proposal similar Federal, state and local government, and private contracts performed by the offeror.

PRACTICE TIP #2: Additional Section L language can place the burden on the offeror to provide thorough and complete past performance information in the event the government does not interview all references.

➤ Advise offerors performance survey questionnaire will be used

If performance questionnaires will be used by the government in surveying references, the OFPP Best Practices Guide recommends providing a copy of the survey in Section J and advising offerors in Section L that the survey will be used to collect data. Be sure to provide the survey as an Attachment in Section J and advise offerors in Section L that the survey will be used to collect performance data. This should assist an offeror in determining whether there are performance problems that should be identified and explained in its submission of performance information.

▣ Developing Section M's evaluation of past performance

This portion of the desk book provides a brief discussion on some common issues for evaluating past performance information that should be addressed in Section M. This is not an exhaustive treatment of the topics; it is provided for consideration as you are developing your Section M language.

➤ First, to evaluate or not evaluate on past performance?

Whether past performance should be an evaluation factor depends on the nature of the work and the basis for contract award. The revised FAR 15.304(c)(3)(i) [{link}](#) requires the evaluation of past performance for all competitive negotiations expected to exceed \$1,000,000; unless the contracting

997 officer documents in the contract file why it should
998 not be evaluated.
999

1000 Thus, it is the responsibility of the contracting
1001 officer to determine if the use of past performance
1002 as an evaluation factor is suitable to the
1003 procurement and how it should be used.
1004

1005 An instance where evaluation of past performance
1006 might not be suitable is when award will be to the
1007 technically acceptable proposal that offers the
1008 lowest price. Since award will be based on lowest
1009 price, a comparative assessment of offerors' past
1010 performance history would not serve any purpose in
1011 the award decision.
1012
1013

1014 ➤ Basis of award: past performance and price only?
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1016 It is not uncommon to find government solicitations
1017 with award criteria based solely on price and past
1018 performance. Such an approach would be a best-value
1019 award since it requires comparison of offerors' past
1020 performance and could require trade-off analysis.
1021

1022 In one solicitation, a best value award based upon a
1023 comparative assessment of price and past performance
1024 was contemplated; both equally weighted. Award would
1025 be made to the offeror with the lowest price and best
1026 past performance score. If the offeror with the best
1027 past performance history did not offer the lowest
1028 price the government would determine the appropriate
1029 trade-off of price for past performance.®
1030

1031 In another solicitation, award was to be made to the
1032 lowest price offeror if it received a low performance
1033 risk rating. Technical proposals were not requested.
1034 Each proposal would be assigned a performance risk
1035 rating of low, moderate, high, or not applicable. If
1036 the lowest price offeror received other than a low
1037 performance risk rating, award could be made to other
1038 than the lowest priced offeror.
1039

1040 ➤ Using "Similar in size, scope and complexity"
1041 solicitation language for past performance
1042 information
1043

How is the past performance information to be evaluated with respect to similarities with the solicited requirement? The answer is that it depends upon the solicitation language.

Language requiring information on contracts that are "similar in size, scope and complexity" to that required by the SOW is acceptable. If you intend to not select any offer that does not meet ALL of these stated "factors" (i.e., similar in size, scope and complexity) Section M language must advise offerors of these consequences.

Otherwise, it is reasonable for offeror to expect that each contract's size, scope and complexity will be considered in the evaluation, even if a contract doesn't meet all of the stated factors.

The evaluation language in Section M can be written for the maximum flexibility as to what type of prior contracts will be considered by the government to be relevant to the current solicitation's requirements.

✓ For example, Section M language can simply state that prior contracts will be evaluated for skills and tasks similar to the current requirement. Such an approach has allowed the government evaluators to recognize widely diversified experience from the offerors and assign value to such experiences as they related to the current solicitation's requirements.

✓ Another approach for Section M language is stating that evaluation of past performance would encompass the contractor's performance in previous contracts including quality, timeliness/responsiveness, cost control, and customer satisfaction. In such a solicitation, the GAO denied a protest challenging the awardee's past performance evaluation score, holding that as the solicitation's language did not state that similarity of dollar value would be considered in past performance comparative assessment the agency properly did not focus on dollar value similarity.

PRACTICE TIP #1: Always keep in mind what instructions and guidance were provided in Section L when writing the Section M evaluation language on past performance.

PRACTICE TIP #2: In determining whether the agency was required to evaluate for specific prior experience, the GAO will read the entire solicitation as a whole, considering the SOW requirements and language in Sections L and M, to arrive at a reasonable reading of the provisions.

PRACTICE TIP #3: The Agency has flexibility in what to evaluate on past performance. You must document in the evaluation records how an offeror's previous contract performances are indicators of potential future performance for the solicitation's similar work.

➤ **Newly formed company--how to handle their past performance rating**

The use of the word neutral has been dropped in the revised FAR Part 15. However, the FAR does state that where an offeror lacks relevant past performance information or it is not available that offeror shall not be evaluated favorably or unfavorably on past performance. FAR 15.305(a)(2)(iv) [{link}](#).

Remember to consider a separate evaluation of the subcontractors' past performance and proposed management personnel's past performance. This will help the government consider other performance information where an offeror lacks corporate past performance history.

The following approaches have been contained in other agency solicitations and provide some good ideas for handling this area.

✓ One Navy solicitation essentially utilized past performance and price as the evaluation criteria.

Using a color scheme, an offeror's performance is rated as Red (high risk), Yellow (moderate risk) or Green (low risk).

First time offerors or offerors for whom current, up-to-date quality performance history are unavailable would be classified as **Insufficient data** offerors. Offerors receiving insufficient data classifications are **Evaluated** solely on the basis of price and past quality performance is not considered in their evaluation. An offeror with the better past performance rating but not the low cost may/may not receive award over the offeror with the lowest cost and **Neutral** rating.

Essentially, in these circumstances, the decision authority would compare these competing proposals based on their prices. Specifically, the selection official would decide whether the more costly offeror represents the best value to the government in light of the better past performance rating.

✓ In another solicitation, the National Aeronautics and Space Administration (NASA) addressed past performance as an equal factor among other factors: (1) mission suitability; (2) cost; (3) relevant past experience and past performance; and (4) other considerations (e.g., phase-in; corporate policies, procedures and practices; labor relations; corporate resources; and small business and small disadvantaged business subcontracting plans). While other non-cost factors will be point-scored and given adjectival ratings, the past performance factor will only be given adjectival ratings. An offeror's relevant experience and past performance would be evaluated for **the overall corporate or offeror's relevant experience and past performance...**(as opposed to that of proposed key personnel) with comparable or related procurement/project efforts [would] be considered.

According to the GAO, this approach does not penalize a newly formed corporate entity for its lack of corporate experience and past performance.

PRACTICE TIP #1: Treatment of the absence of past performance information is easier when past

performance is scored adjectivally or with colors. This also mitigates any possible prejudice to the offeror lacking the required information when the selection authority is briefed on the evaluation results.

PRACTICE TIP #2: Even when other factors will be numerically scored, the past performance factor should be scored with an adjectival rating.

PRACTICE TIP #3: Give serious consideration to separately addressing major proposed subcontractors and key personnel's experience/performance from that of corporate experience/performance. This will allow the government to better evaluate offerors' proposal whose proposed personnel are currently employed by the incumbent or are current team members with the incumbent.

PRACTICE TIP #4: The absence of a past performance rating does not preclude, in a best value procurement, a determination to award to a higher-priced offeror with good past performance record over a lower-cost offeror with a no past performance rating. It will, however, most likely, preclude evaluation scoring that penalizes an offeror for lacking past performance information.

➤ Handling the absence of PPI on company not newly formed but lacking relevant prior experience

Keep in mind that a company may not be newly formed but lacks the relevant past performance history. How you handle that will depend upon the solicitation's language.

For instance, Section M language could advise that the agency's past performance risk assessment is to be based upon each offeror's current and past record of performance as it related to the probability of successful accomplishment of the required effort.®

It should also state what the agency will do in the absence of any relevant past or current performance history. One approach would be, AIn the absence of relevant past or current performance history, the

offeror's proposal [would] be considered unknown for performance risk evaluation purposes.®

Under such an evaluation scheme the agency is precluded from favorably or unfavorably rating a corporation that is not newly formed, but lacks the relevant experience.

Conversely, if the agency wants to evaluate the lack of relevant experience for an existing corporation as a risk then the solicitation language should advise offerors of this.

PRACTICE TIP #1: In addition to the ideas discussed above, consult the practice tips provided on rating newly formed companies.

➤ Inform offerors that the Government reserves the right to consider past performance information obtained through other means

What sources might the Government consider when evaluating the offeror's past performance? Section M should advise that the Government may, in its evaluation of past performance, rely upon contracts not referenced by the offeror.

This open-ended approach can be qualified by advising offerors that they have the burden of providing complete and thorough past performance information.

✓ For example, the solicitation can warn offerors: **A**Since the Government may not necessarily interview all of the sources provided by the offerors, it is incumbent upon the Offeror to explain the relevance of the data provided....the burden of providing thorough and complete past performance information rests with the offerors.® This language permitted an agency to rely on its exhaustive past performance research (which brought few results) since it used the offeror's references as well as its other sources; the GAO relied on the solicitation language to reject protester's allegation of unfair evaluation.

➤ Do all references have to be contacted? There are risks when your agency is listed as a reference and you do not contact internal sources!

An interesting wrinkle associated with the issue of past performance information is when the government has not contacted all the references provided in the proposal.

As a matter of law, the GAO has held that there is no legal requirement that all references listed in a proposal be checked. While this is true, the GAO does note what sources of information the agency did consider, so the agency should try to get sufficient information for its evaluation of past performance.

The Government can contact its own personnel concerning contracts the offeror might not have listed. This could include a COR who is also serving on the evaluation panel.

Great care should be taken; do not ignore past performance references easily available from within the agency. Where the Government has not considered the offeror's contracts with the agency that the offeror had identified in its proposal, the government cannot rely on the general rule that there is no legal requirement that all references be contacted.

The GAO has held the agency to higher standards in such situations, holding that the information is simply too close at hand to require offerors to shoulder the inequities that spring from an agency's failure to obtain, and consider, the information."

Typically, these successful protests hinge on the prejudicial effect to the offeror where it is probable that the ignored information could have affected the scoring and, in turn, influence the selection decision.

➤ Be prepared to clarify or conduct discussions about past performance information

The revised FAR 15.306 [{link}](#) identifies when the government must provide the offeror an opportunity to

clarify or discuss its past performance information after receipt of proposals. Consult these provisions in determining what is appropriate.

Section M can state that the offeror will be given an opportunity to address unfavorable past performance reports. The GAO has made it clear that under the old FAR 15.610 provision, the agency was to give the offeror the opportunity during discussions to respond to past performance reports, which the offeror had no previous opportunity to comment. The revised FAR language requires similar treatment.

Finally, the agency must discuss with the offeror any negative past performance information involving the agency's own contracts.

➤ Document, document, document

Regardless how past performance is to be handled under Section M, the agency must document its evaluation processes and analyses.

When an evaluation appears to be consistent with the evaluation criteria, the GAO will still question the evaluation and award decision where the documentation is inadequate.

The agency's contemporaneous evaluation records must identify any definitions and detailed analysis of past performance that were used to conduct the evaluation of offeror's past performance information.

SAMPLE SECTION L INSTRUCTION TO OFFERORS ON PAST PERFORMANCE

This portion of the Desk Book provides sample language for Section L of the solicitation in addressing past performance.

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Past performance information will also be used to assess risk. Performance evaluation and risk assessment will consider the number and severity of a contractor's problems, the effectiveness of corrective actions taken, and the contractor's overall work record. Assessment of performance risk will consider the relative merits of the contractor's prior experience and performance.

Past performance information itemizes the experience which the offeror, and any proposed subcontractors, have had over the last three years in performing work similar to that to be performed under this contract (recent experience of the prime contractor is of the greater value). Contracts for which more than three years have passed since completion (measured from the date of _____ proposal submission) will not be evaluated.

List all Government contracts (prime's most recent first) that are similar in size and complexity to this one, including current ones. Specific information required includes:

- Contract numbers and titles
- Customer's address
- Name, telephone number and facsimile number of the principal customer point of contact
- Contracting Officer's name, phone number and facsimile number
- Level of effort
- Synopsis of the Statement of Work in 50 words or less
- Type of contract
- Original cost estimate

1401 ➤ Contract deliverables and original schedule
1402 ➤ Actual cost and schedule results.
1403
1404 Identify any cure notices, show cause letters, termination
1405 actions that you may have received within the past three
1406 years.
1407
1408 It is the intention of the evaluation board to contact the
1409 offeror's previous customers to solicit further
1410 information about performance in regard to quality,
1411 timeliness and cost.
1412
1413 The accuracy of the information, including telephone
1414 numbers of the points of contact are the full
1415 responsibility of the offeror and inaccuracy will result
1416 in a lower score.
1417
1418 Other related Past Performance information will be sought
1419 and used for evaluating completeness and accuracy of the
1420 contractors proposals. Past Performance information may
1421 be obtained from a variety of sources including other
1422 Government contracting activities reports and GAO Defense
1423 Procurement Fraud Information on Plea Agreements and
1424 Settlements.

SAMPLE SECTION M EVALUATION OF PAST PERFORMANCE

This portion of the Deskbook provides sample language for Section M of the solicitation in addressing past performance.

**

Evaluation of past performance will consist of the following equally weighted subfactors.

- Quality of offeror's past performance
- Timeliness of offeror's past performance
- Control of offeror's previous cost performance
- Accuracy, completeness, and complexity of past performance data

In evaluating the proposals, all available past performance data will be considered. Information presented in the offeror's proposal, together with information from other sources available to the Government, will provide the input for evaluation of this factor.

Contracts for which more than three years have passed since completion (measured from the date of _____ proposal submission) will not be evaluated.

Offeror's, including proposed subcontractors, lack of past performance evidence will be treated as an unknown performance risk.

Emphasis will be placed on the offeror's, to include subcontractors, record of past performance on jobs of comparable complexity and similar technical requirements with consideration given to the degree to which the offeror has met cost, technical and delivery objectives. The accuracy and completeness of the proposal past performance data will be evaluated.

Past performance information will be used to assess risk. Past performance evaluation and risk assessment will consider the number and severity of a contractor's problems, the effectiveness of corrective actions taken, and the contractor's overall work record. Assessment of

performance risk will consider the relative merits of the contractor's prior experience and performance.

Past performance information itemizes the experience which the offeror and any proposed subcontractors have had in performing work similar to that to be performed under these contracts (recent experience of the prime is of greater value).

Past Performance Questionnaires

Past performance questionnaires are used to collect information on an offeror's performance on contracts as opposed to the past practice of simply verifying an existence of similar previous performance. Past performance is now a mandatory evaluation factor in the source selection process. Under FAR 15.304 [{link}](#), past performance must be used in all solicitations exceeding \$1,000,000 unless the contracting officer documents in the contract file the reasons why past performance should not be evaluated.

Though the type of information and relative importance of past performance is left to the discretion of the agency, the following factors should be considered.

1. The information requested must reflect the relevancy of the requirements.

2. Past performance should be ranked to ensure that it is meaningfully considered. The OFPP recommends that past performance should be at least equal in significance to any other non-cost evaluation factor.

Past performance questionnaires should be sent to the contracting office responsible for the administration of the contract and also to the customer or "user" who is familiar with the offeror's performance to ensure a balanced mix of subjective and objective views by the agency.

PART IV. CONTRACT ADMINISTRATION

To streamline PPI collection, contracting officers should specify in the contract the frequency of, and the individual(s) responsible for, past performance assessments associated with the contract or order.

1523 Choose one of the following clauses for use in Section G -
1524 Contract Administration as prescribed:

1525
1526 **Description for use:** All Contracts with an estimated value
1527 (base plus option years) in excess of \$1,000,000 in the
1528 Services and Information Technology business sectors. If
1529 the contract value breaches this threshold at anytime
1530 during contract performance due to modification, PPI
1531 collection must be initiated.

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1536 ➤ Alternative I will be used for cost reimbursement,
1537 fixed-price, time and material, or indefinite delivery
1538 indefinite quantity (IDIQ) contracts (same or similar
1539 scope of work under each task/delivery order and
1540 individual orders will not be evaluated).

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**Collection of Contractor Past Performance
Information (DISA [date]) ALT I**

1547 Contractor performance under this contract will be
1548 evaluated on a [quarterly, semi-annual, annual]
1549 basis in accordance with FAR 42.15. The
1550 contractor will be provided a copy of the
1551 evaluation as soon as it is finalized and will
1552 have 30 days to submit comments. Individuals
1553 within the Agency who are responsible for
1554 collecting and reviewing past performance
1555 information under this contract are the appointed
1556 task monitor (TM) and/or contracting officer's
1557 representative (COR), the contracting officer, and
1558 a senior program/project management official.

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1561 ➤ Alternative II will be used IDIQ contracts in which the
1562 scope of effort for each task or delivery order varies
1563 and each task/delivery order will be evaluated.

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**Collection of Contractor Past Performance
Information (DISA [date]) ALT II**

1569 Contractor performance under this contract will be
1570 evaluated on a task/delivery order basis. Each
1571 task/delivery will be evaluated [quarterly, semi-
1572 annual, annual] in accordance with FAR 42.15. The

1573 contractor will be provided a copy of each
1574 evaluation as soon as they are finalized and will
1575 have 30 days to submit comments. Individuals
1576 within the Agency who are responsible for
1577 collecting and reviewing past performance
1578 information under this contract are the appointed
1579 task monitor (TM), appointed contracting officer's
1580 representative (COR), contracting officer, and a
1581 senior program/project management official.
1582